

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA 18-CR-6094(G)

5 vs.

6 CARLOS FIGUEROA, XAVIER TORRES,
7 AND JEAN KARLOS PIZZARO,
8 Defendants.

Rochester, New York
August 6, 2020
10:24 a.m.

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10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE FRANK P. GERACI, JR.
12 UNITED STATES DISTRICT JUDGE

13 JAMES P. KENNEDY, JR., ESQ.
14 United States Attorney
15 BY: KATYLYN HARTFORD, ESQ.
16 CASSIE M. KOCHER, ESQ.
17 Assistant United States Attorneys
18 500 Federal Building
19 Rochester, New York 14614
20 Appearing on behalf of the United States

21 MAURICE J. VERRILLO, ESQ.
22 Appearing on behalf of Xavier Torres

23 MATTHEW LEMBKE, ESQ.
24 Appearing on behalf of Jean Karlos Pizzaro

25 PAUL VACCA, ESQ.
26 Appearing on behalf of Carlos Figueroa

27 ALSO PRESENT: Nicolas Penchaszadeh, Spanish Interpreter

28 COURT REPORTER: Christi A. Macri, FAPR-RMR-CRR-CSR(NY/CA)
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1 P R O C E E D I N G S

2 * * *

3 (WHEREUPON, Carlos Javier Figueroa and Xavier
4 Torres are present in court; Jean Karlos Pizzaro is on the
10:16:17AM 5 phone).

6 **THE CLERK:** United States of America vs. Carlos
7 Javier Figueroa, Xavier Torres and Jean Karlos Pizzaro,
8 18-CR-6094.

9 And, Nicolas, if you'd raise your right hand?
10:23:18AM 10 (WHEREUPON, the interpreter was sworn).

11 **THE COURT:** Good morning. Are you Carlos Javier
12 Figueroa?

13 **DEFENDANT FIGUEROA:** Yes, Your Honor.

14 **THE COURT:** Appear with your attorney Mr. Verrillo?

10:23:55AM 15 **THE DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** Are you Xavier Torres?

17 **DEFENDANT TORRES:** Yes.

18 **THE COURT:** Appear with your attorney Mr. Verrillo?

19 **THE DEFENDANT:** Yes.

10:24:01AM 20 **THE COURT:** And I believe we have Jean Karlos
21 Pizzaro on the telephone; is that correct?

22 **DEFENDANT PIZZARO:** Correct.

23 **MR. LEMBKE:** It is, Your Honor.

24 **THE COURT:** And you appear with your attorney
10:24:14AM 25 Mr. Lembke?

1 **DEFENDANT PIZZARO:** Yes.

2 **THE COURT:** Okay. This matter's on pursuant to a
3 motion to set a trial date.

4 Ms. Kocher is here on behalf of the Government.

10:24:25AM 5 **MS. HARTFORD:** Ms. Hartford, Your Honor.

6 **THE COURT:** Ms. Hartford. And Ms. Kocher is seated
7 at the table.

8 **MS. HARTFORD:** Thank you.

9 **THE COURT:** Regarding this matter, where are we?

10:24:39AM 10 **MS. HARTFORD:** Well, Judge, at this point as the
11 Government has moved, I think it's appropriate to set a trial
12 date.

13 We would also ask for a status conference in about
14 six weeks to give the parties a chance to finalize any
10:24:58AM 15 potential plea discussions as there are still three defendants
16 on the case.

17 I've been speaking with AUSA Marangola, who is also
18 on this matter for the Government and who I understand has had
19 detailed discussions with all three defense attorneys, and he
10:25:19AM 20 thinks that six weeks should be sufficient in order to
21 finalize any plea negotiations.

22 And then at that status conference we could set
23 deadlines for pretrial submissions, Jencks, et cetera.

24 **THE COURT:** Okay. Mr. Vacca?

10:25:39AM 25 **MR. VACCA:** Your Honor, that does represent my

1 conversations with Mr. Marangola.

2 He also indicated to me that this indictment
3 probably would be superseded at some point in time. Of course
4 if that happens, we have to have sufficient time for further
10:25:54AM 5 discovery to make motions, additional charges will be added
6 so...

7 **THE COURT:** I'm not pleased about that. What's that
8 all about?

9 **MS. HARTFORD:** Judge, without getting into too much
10:26:04AM 10 detail, there is one element of the investigation that's
11 ongoing. We would be prepared to supersede I believe
12 reasonably soon, but would like to have an opportunity to
13 complete plea negotiations prior to that giving the defendants
14 a chance to take some offers before we supersede.

10:26:24AM 15 **THE COURT:** This case is two years old. Late
16 superseding indictments I thought were things of the past.

17 **MS. HARTFORD:** I understand, Your Honor. There
18 have been some developments recently that account for that.

19 **MR. VACCA:** Your Honor, just knowing that this
10:26:38AM 20 happens in many of these cases, as part of my omnibus motions
21 I did address the issues of superseding indictment, which I
22 would ask the Court to review.

23 The indication to me would be that they would be
24 adding another murder charge on to this, which is obviously to
10:26:53AM 25 be taken the most serious nature.

1 So I think sooner rather than later whether or not
2 the prosecution should let us know whether or not they intend
3 on superseding.

4 **THE COURT:** Well, I think that might be a good
10:27:06AM 5 incentive for you to have discussions regarding disposition of
6 this case as well.

7 Do you have any objection to putting the matter on
8 for mid-September for status?

9 **MR. VACCA:** No problem at all, Your Honor.

10:27:19AM 10 **THE COURT:** Okay. Regarding Carlos Javier Figueroa,
11 we'll put the matter on for September 10th, 2 p.m. for status.
12 And we'll get back to picking a trial date shortly.

13 Mr. Verrillo regarding Mr. Torres?

14 **MR. VERRILLO:** Yes, Your Honor. I did want to note
10:27:42AM 15 that this new charge, which is going to be apparently a
16 homicide charge, my client has not been charged with anything
17 of that nature to date.

18 So I have requested discovery from Mr. Marangola.
19 I understand he's out of town, but obviously it's -- as far as
10:27:55AM 20 I'm concerned, it's a whole new ballgame to see that. So I'm
21 hoping that that discovery will be forthcoming.

22 But, obviously, I have to reserve motions and all
23 other rights if that's what's going to happen. So -- but I do
24 agree with having a status conference as well.

10:28:10AM 25 **THE COURT:** Okay. We'll put this -- do you have any

1 objection to September 10th?

2 **MR. VERRILLO:** No, Your Honor.

3 **THE COURT:** We'll put that matter on as well for
4 September 10th, 2 p.m. for status.

10:28:23AM 5 Regarding Jean Karlos Pizzaro, Mr. Lembke?

6 **MR. LEMBKE:** No objection to a status conference on
7 September 10th at 2 p.m., Your Honor.

8 **THE COURT:** Okay. We'll put that matter on as well
9 for September 10th for status, 2 p.m..

10:28:42AM 10 Regarding a trial, assuming all three did go to
11 trial, how long are you anticipating this trial to go on?

12 **MS. HARTFORD:** Your Honor, we are -- this is our
13 best estimate to predict length of the trial, counsel has
14 reviewed the guidelines for trial during the Covid pandemic
15 and has attempted to take that into consideration, but would
16 ask the Court just to note that that is a bit of an unknown as
17 far as how that will actually effect the logistics.

18 But given that, based on the number of defendants
19 at this time, we have approximately nine cooperators we
10:29:04AM 20 anticipate testifying; about eight other civilian witnesses;
21 some of those 27 witnesses will need interpreters.

22 We've had about -- and that's in addition to the
23 dozens of law enforcement witnesses; we'll have lab experts
24 testifying about firearms and drugs; possibly also forensic
10:29:53AM 25 evidence; and also medical examiner, at least one, possibly

1 more.

2 We had 11 search warrants that we anticipate
3 putting on during the course of the trial; more than 11 drug
4 seizures that we would present as evidence.

10:30:13AM 5 This was a wiretap investigation. Of course, it's
6 a moving target as far as how many calls and text messages
7 that we'll use. But after an initial review, it appears that
8 somewhere around 100 could be an accurate estimate.

9 There's also pole camera footage. There are at
10:30:32AM 10 least 50 clips that are pertinent. But, again, as we move
11 forward towards trial, that could either expand or narrow
12 depending on who is left facing charges and what kind of
13 evidence we'll need at that point.

14 There are also several seized phones that were
10:30:51AM 15 extracted as well. I would anticipate there would be some
16 evidence of extractions from a couple of those phones.

17 That being said, Judge, our best estimate at this
18 time is that it would take about three to four months to put
19 on the trial, but again asking the Court to keep in mind we're
10:31:07AM 20 doing our best with that guess with the circumstances and
21 procedure that we'll be facing.

22 **THE COURT:** Sure, I understand that. And I know
23 that complication with Covid in a trial of this magnitude
24 would take probably three courtrooms: One courtroom for the
10:31:24AM 25 trial; second courtroom for a jury breakroom and

1 deliberations; and a third courtroom for the public and any
2 press that might be involved in that. So it's a complex
3 matter, but I understand it would take several months.

4 Mr. Vacca, what's your availability?

10:31:45AM 5 **MR. VACCA:** Your Honor, I do have several cases
6 pending in state court. However, that being said, they are
7 just scheduling and having pretrials now and dealing with
8 pleas.

9 I've asked a number of judges and other individuals
10:31:59AM 10 what their best guesstimate is for the State to open up and
11 they all say it's at least going to go into next year. There
12 are going to be no trials, so I don't know what my trial
13 schedule is with the State, but I guess my feeling is we're
14 first over here and they're gonna have to wait.

10:32:16AM 15 **THE COURT:** You'd be available in January?

16 **MR. VACCA:** Yes, Your Honor.

17 **THE COURT:** Any objection until waiting until
18 January for this?

19 **MR. VACCA:** No.

10:32:22AM 20 **THE COURT:** Mr. Verrillo?

21 **MR. VERRILLO:** Yes, Your Honor. I would be okay
22 with a January timeframe. I do have a trial that just got set
23 for one day, February 3rd. So I'd like to be able to finish
24 that.

10:32:36AM 25 **THE COURT:** Where is that?

1 **MR. VERRILLO:** A civil matter in Livingston County,
2 but Supreme Court. But that would be the only day I would not
3 be available.

4 **THE COURT:** Okay. If we have to take one day break
10:32:45AM 5 in three or four months, I don't think that would be a
6 problem.

7 **MR. VERRILLO:** I think that's wise if we could get
8 it. It's a different kind of situation.

9 **THE COURT:** Okay. Mr. Lembke?

10:32:55AM 10 **MR. LEMBKE:** That's fine, Your Honor, January.

11 **THE COURT:** So let's do this, let's schedule jury
12 selection for January 4th, anticipating this case will be
13 conducted for the month of January, February, and March,
14 assuming all three defendants do proceed to trial.

10:33:28AM 15 Mr. Vacca, do you have any objections to the
16 exclusion of time for speedy trial purposes between now and
17 January 4th?

18 **MR. VACCA:** No, Your Honor.

19 **THE COURT:** Mr. Verrillo, do you have any objections
10:33:41AM 20 to the exclusion of time for speedy trial purposes between now
21 and January 4th?

22 **MR. VERRILLO:** No, Your Honor.

23 **THE COURT:** Mr. Lembke, do you have any objection to
24 exclusion of time between now and January 4th?

10:33:53AM 25 **MR. LEMBKE:** No, sir.

1 **THE COURT:** Ms. Hartford, do you have any objection
2 from the Government?

3 **MS. HARTFORD:** No, Your Honor. Thank you.

4 **THE COURT:** Based upon the complexity of this case
10:34:03AM 5 as outlined by Ms. Hartford, the number of witnesses, the
6 number of defendants, the fact that this would take a lot of
7 effort to put this matter together over a long three month
8 period of time, particularly in light of the Covid situation,
9 the precautions we would have to take to protect all the
10:34:28AM10 parties, jurors, attorneys, witnesses, the Court finds that
11 the exclusion of time for speedy trial purposes between now
12 and January 4th, 2021, is in the interest of justice and
13 outweighs the right to the public to a speedy trial.

14 Based upon the complexity of this case and the
10:34:54AM15 potential for a superseding indictment and additional
16 discovery, the attorneys would need to obviously review that
17 with their clients in order to properly prepare for that
18 trial, which will be obviously complex.

19 And, therefore, the Court does exclude the time
10:35:15AM20 between today and January 4th, 2021, regarding the case of
21 Carlos Javier Figueroa, Xavier Torres, and Jean Karlos
22 Pizzaro.

23 The matter will be on for September 10th again at
24 2 p.m. for all three defendants for status regarding potential
10:35:39AM25 disposition of this case for one or more of the defendants.

1 Hopefully all participate in fruitful discussions regarding
2 that.

3 What is the -- is this a life sentence I assume in
4 these cases?

10:35:54AM 5 **MS. HARTFORD:** Yes, Your Honor. So it will be
6 different for each defendant. Anyone charged with homicide it
7 would be a life sentence; also anybody convicted of the drug
8 conspiracy.

9 But then for whom a cross-reference in the
10 guidelines for the homicide would be appropriate, the
11 guideline sentence would be a life sentence.

12 So that is accurate.

13 **THE COURT:** Okay, thank you.

14 Mr. Figueroa, obviously you need to discuss that
15 with your attorney Mr. Vacca to make sure you spend sufficient
16 time to discuss the potentials here, the potential penalties
17 involved with a conviction after trial.

18 Mr. Torres, you also need to discuss the matter
19 with Mr. Verrillo regarding all the issues raised in this case
20 and the potential if there was a conviction after trial.

21 And Mr. Pizzaro, again, you need to discuss that
22 fully with Mr. Lembke once he has -- and all the attorneys --
23 have the information sufficient to properly advise their
24 clients.

25 Okay, anything else from the Government?

1 **MS. HARTFORD:** No, Your Honor. Thank you.

2 **THE COURT:** Mr. Vacca?

3 **MR. VACCA:** Your Honor, what time will you be
4 starting and ending every day? Just so I know for scheduling
10:37:13AM 5 things that are scheduled further out.

6 **THE COURT:** Quite frankly, on September 10th we'll
7 discuss that in more detail. We'll set a pretrial date, we'll
8 discuss a trial calendar.

9 I'll work with all the attorneys. I mean, I
10:37:27AM 10 imagine you have some conflicts in there, might need a break.

11 Typically in a case of this magnitude what I would do is go
12 from 8:30 to 1:30 Monday through Thursday, maybe take off
13 Fridays so I can handle my other calendar matters and you can
14 also as well handle all matters you may have in your
10:37:48AM 15 individual offices.

16 By then there may be weeks where you have
17 conflicts. And I understand you have doctors' appointments
18 and other matters you need to attend to as well.

19 So why don't we wait until September 10th and then
10:38:00AM 20 we'll work out a more detailed schedule. If you can't work
21 out a disposition, I'm hopeful that you can work out a
22 disposition with the Government, but if not, we'll be ready to
23 proceed.

24 **MR. VERRILLO:** Your Honor, the motion schedule and
10:38:13AM 25 everything you'll deal with next time as far as the schedule

1 | for --

2 **THE COURT:** Yeah, if there are any significant
3 motions, maybe refer it back to the magistrate judge, start
4 all over again.

10:38:23AM 5 MR. VERRILLO: Okay.

6 **THE COURT:** That would delay obviously any trials in
7 this case.

8 Mr. Lembke?

9 MR. LEMBKE: I understand, Your Honor.

10:38:33AM10 THE COURT: You all set?

11 MR. LEMBKE: I don't have anything to add.

12 THE COURT: Okay, great. Thank you, everybody.

13 (WHEREUPON, proceedings adjourned at 10:38 a.m.)

14 | * * *

CERTIFICATE OF REPORTER

17 In accordance with 28, U.S.C., 753(b), I certify that
18 these original notes are a true and correct record of
19 proceedings in the United States District Court for the
20 Western District of New York before the Honorable Frank P.
21 Geraci, Jr. on August 6th, 2020.

23 | S/ Christi A. Macri

24 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
Official Court Reporter